



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31524589

Date: JULY 2, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a hydrologist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed a subsequent appeal and a motion. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

A petitioner's motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. A petitioner's motion to reopen a proceeding must be filed within 30 days of the decision that the motion seeks to reopen, but we have the discretion to excuse a delay in filing if the petitioner demonstrates that the delay was reasonable and was beyond the petitioner's control. *See* 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

We dismissed the Petitioner's appeal on June 1, 2023, and issued the decision by mail. On the cover page of our dismissal notice, we advised the Petitioner: "The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. Please do not mail any motions directly to the AAO." We did not indicate that the Petitioner could file an appeal on our appellate decision, because the regulations make no provision to allow appeals of that kind. The Petitioner, however, prepared a new Form I-290B, Notice of Appeal or Motion, indicating that she was appealing our decision, and the Petitioner mailed the form directly to the Administrative Appeals Office. We returned the form to the Petitioner on July 7, 2023, stating that our appellate decision was not appealable, and that "[a]ppeals and motions must be filed in accordance with the

instructions for Form I-290B.” A benefit request, such as an appeal, that is not filed in accordance with the filing instructions will not retain its filing date. *See* 8 C.F.R. § 103.2(a)(7)(ii)(C).

The Petitioner then filed the same Form I-290B on July 17, 2023 at a facility equipped to accept such filings, and submitted a supplemental statement which we received on August 22, 2023. We treated this filing as a motion, and dismissed it because it was untimely. The deadline for filing a timely motion to reopen or reconsider was July 5, 2023, accounting for the 30-day filing period; three days for mailing; and an extra day to account for the Independence Day holiday on July 4th. *See* 8 C.F.R. §§ 103.5(a)(1)(i) and 103.8(b). Also, the regulations make no provision for submitting a supplemental statement after a motion has been filed.

We dismissed the Petitioner’s July 17, 2023 filing as untimely on November 8, 2023. In our November 2023 notice, we again advised the Petitioner that if she wished to file a motion to reopen or reconsider, she had 33 days in which to do so.

The shipping label on the latest motion package shows that the Petitioner mailed her current motion on the day of the filing deadline, December 11, 2023. U.S. Citizenship and Immigration Services (USCIS) received the motion a week later, on December 18, 2023. The filing date is the date USCIS properly receives a filing in accordance with filing instructions. *See generally* 1 *USCIS Policy Manual* B.6(C), <https://www.uscis.gov/policy-manual>.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) does not permit any extension of the filing deadline for motions to reconsider. Therefore, we must dismiss the motion to reconsider as untimely. The same regulation states that untimely filing of a motion to reopen may be excused in our discretion where the petitioner demonstrates that the delay was reasonable and beyond the petitioner’s control. The Petitioner acknowledged “the delay in sending this application,” stating: “with the pace of work I currently have it was difficult for me to finish printing everything just in time.” However, this claim is not sufficient to establish that the delay in filing was beyond her control. Therefore, we will dismiss the motion to reopen.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.